

ST 03-0026-PLR 11/06/2003 TELECOMMUNICATIONS EXCISE TAX

This letter discusses a reseller of telecommunications. See 86 Ill. Adm. Code 495 (This is a PLR.)

November 6, 2003

Dear Xxxxx:

This letter is in response to your letter dated July 30, 2003 in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

I am writing on behalf of AAA for a ruling on application of Illinois' Sales Tax regulations to my client's specific facts. This request is being made pursuant to 2 Ill. Adm. Code 1200.

FACTS: AAA's headquarters are located at CITY/STATE. AAA's primary business is a vendor (manufacture and sale) of teleconferencing bridges, software and solutions, both domestically and internationally. AAA's primary customer base is telephone service providers ('TSPs'), who in turn, sell conferencing services to their end-users. The TSPs may or may not be headquartered in the State of Illinois. For purposes of this request, some of the TSPs' end-user customers will be resident business customers within the State of Illinois.

AAA wishes to offer an additional service to the TSPs for use with the teleconferencing bridges. The new service will be providing recording & playback of conference calls to the TSPs. With this service, the TSPs will be able to offer their end-user customers the

ability to record telephone conference calls and play back the conference calls via telephone, the Internet and purchased media such as CDs. The recording & playback services will be charged based on minutes used for recording a conference call and the minutes used when subsequently listening to a call. AAA will provide the data relating to recording & playback usage to the TSPs and will invoice the TSPs accordingly. The TSPs will directly bill the end-users, either on minutes, monthly service fee, or other structure deemed appropriate by the TSP. AAA will not be responsible for and will not bill or invoice end-users directly.

In combination with this service, the TSPs' customer subscribers will be able to request CDs, transcriptions and translations of the recorded conference calls via the Internet. The Internet will be the sole mechanism whereby the end-user will request a CD, paper translation or transcription of a conference call. AAA will fulfill this request, provide proof of order to the TSP, who in turn will be responsible for billing the end-user. AAA is not selling the CDs directly to the end-customer, but rather is providing fulfillment services only. Specific invoice items include conference call recordings on CDs, translation fees and transcription fees.

ISSUE: Does AAA incur sales tax liability in the State of Illinois for fulfillment, on behalf of the TSPs, of the CDs of conference call recordings ordered by the TSPs' end-users via the Internet?

AAA POSITION: Because AAA will not be billing or providing the recording & playback services in question directly to the end-users customers, and because AAA will not have a contractual relationship with the end-user customers, it is AAA's position that AAA does not incur sales tax liability for CD orders placed via the Internet. AAA will only be a fulfillment provider with respect to the purchase of CDs. Per 35 ILCS 120/1, section 1 and 35 ILCS 120/2c section 2c. We are not selling product directly to end users, but to the TSPs. The transfer of goods for consideration would be for the purposes of resale to their customers. We will obtain resale certificates from all of our customers.

In addition to the above facts, per 2 Ill. Adm. Code 1200, please note the following:

1. I have enclosed a copy of the service agreement between AAA and the TSPs. AAA does not have, and is not responsible for, the contracts between the TSPs and their end-user customers.
2. The tax period at issue is the Year 2003-4.
3. There is not an audit or litigation pending with the Illinois Department of Revenue.
4. To the best of AAA's knowledge, the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, or whether the taxpayer or any representatives previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.

In the event this correspondence and/or the issue is selected or subject to public dissemination, we ask that the Department delete the following information:

- a. The enclosed Service Agreement as trade secret.

- b. The name and address of AAA and myself, as the taxpayer's representative.
- c. Confidential return information.

Please also provide a cumulative annual index of ruling letters. I have included the requisite check in the amount of \$3.00, made payable to the Illinois Department of Revenue.

Please contact me directly if you have any questions. Thank you very much for your time.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

Under the situation set forth in your letter, AAA is a reseller of telecommunications and not a retailer. Therefore, AAA should obtain resale certificates from its clients to document the transaction. If this is not the case and AAA's customers are not reselling the telecommunications, then AAA should charge tax.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.